IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8713 OF 2004

Kavita Narendra Hedaoo .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

Mr.R.K.Mendadkar for petitioner

Mr.R.D.Rane, Addl.G.P. for State.

CORAM : A.P.SHAH AND

S.C.DHARMADHIKARI, JJ.

DATE : 6TH DECEMBER 2004.

P.C.

. By this petition under Article 226 of the Constitution of India, petitioner is challenging an order dated 13th September 2004 passed by respondent No.2, invalidating caste certificate pertaining to Halba scheduled tribe.

2. It is contended by petitioner that Halba scheduled tribe is recognised as scheduled tribe under Presidential Notification issued under Article 342(1) of the Constitution of India. The petitioner originally hails from Amravati District. Father of petitioner, Narendra Pundalik Hedaoo was born on 11th April 1941 and in the primary school leaving certificate his caste has been mentioned as Halba. Similarly, in the higher secondary school leaving certificate issued by Headmaster of R.D.Higher Secondary School, Pandhurna, the same caste is mentioned. Petitioner's father was also granted caste certificate by the then Competent Authority certifying that he belongs to Halba tribe. Petitioner also relies upon the entry in the primary school leaving certificate pertaining to her grand father.

3. Petitioner was granted caste certificate by the competent authority as belonging to Halba tribe. This certificate was granted on 28th July 1998. As petitioner intended to prosecute higher studies, with the assistance of benefits meant for reserved category candidates, she moved

respondent No.2 Committee for verification of caste certificate. Along with her application she submitted 15 documents. Thereafter, a home enquiry was made by the Vigilence Cell. Petitioner contends that the Police Inspector from this cell recorded statements of grand mother of petitioner and examined various school records. He has given a eport that the petitioner does not belong to Halba tribe. The committee called upon petitioner to file a reply with regard to the contents of this report. Copies of statement recorded by the Police Inspector have not been made available to the petitioner. She applied for making the same available. It is her grieance that the committee invalidated the caste claim by the impugned order by brushing aside all other documents and only relying upon the contents of the report.

4. We have heard Mr.Mendadkar, learned Counsel appearing for petitioner and Mr.Rane, learned A.G.P. for State. With their assistance we have perused the record.

5. Mr.Mendadkar, learned Counsel appearing

for petitioner submits and in our view with considerable substance that respondent No.2 committee erred in examining the case with reference to traits, characteristics and customs of the community in question. It appears that the Committee applied affinity test and ethnic linkage and discarded the documents which are admittedly prior to First Presidential Order 1950. Mr.Mendadkar invited our attention to the observations of scrutiny committee where the scrutiny committee holds that the documents at Sr.Nos. 2 to 7 and 11 to 13 are school records in respect of the candidate and the relatives showing their caste as Halbi. However, the scrutiny committee observed that it is not clear whether these entries are pertaining to Halbi Scheduled Tribe. The Committee made certain general observations about Halba/ Halbi scheduled tribe and Halba - Koshti. Mr.Mendadkar places reliance upon the judgement/ order passed by Division Bench of this Court to which one of us, (A.P.Shah, J) was a party on 7th March 2002 in W.P. No.539 of 2002.

5. Mr.Rane, learned Addl.G.P. appearing for

respondent Nos. 1 and 2 found it difficult to support the approach of scrutiny committee. He submits that the scrutiny committee has taken into consideration the fact that in some parts of Vidharbha (falling in Madhya Pradesh), sub-caste Halbi of caste Koshti is recorded as Halba which is popularly known as Halba Koshti. This particular entry, therefore, cannot be held as Halba. He submits that these are findings of fact which should not be disturbed in Writ Jurisdiction by us.

6. In our view, the controversy is covered by the judgement and order in W.P.539 of 2002 (supra). In identical facts and circumstances, this Court upheld the contention of petitioner by relying upon observations of Constitution Bench of Supreme Court in the case of State of Maharashtra Vs. Milind and Ors. Division Bench of this Court in paras 8, 9, 10 and 11 has observed as under:-

> "8. The respondent No.2 noted that the documents at serial nos.3, 11, 13, 25, 31 and 33 are having high probative

value. However, the respondent No.2 observed that "these documents submitted by the candidae himself and though caste recorded as "Halbi" in these documents, the occupation is shown as "weaving" which means "Koshti" in vernacular. Admittedly, weaving is taboo in "scheduled Tribe Halba/Halbi". From these documents, it is clear that entry Halti is sub-caste entry of Koshti."

9. It is not possible to agree with a view taken by the 2nd respondent inasmuch as it is now settled position of law that it is not permissible for the Courts or any authorities to interpret entries in the Presidential Notification and the entries are required to be taken as a stand. In this connection, a reference may be made to the decision of the Constitution Bench of the Apex Court in State of Maharashtra Vs. Milind and Ors. (supra). The relevant observations of the Supreme Court in para 36, are reproduced below:-

"1. It is not at all permissible to hold any inquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the entry concerned in the Constitution (Scheduled Tribes) Order, 1950.

2. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.

3. A notification issued under clause (1) of Article 342, specifying Scheduled Tribe, can be amended only by law to be made by Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribe issued under clause (1) of Article 342 only by Parliament by law and by no other authority.

4. It is not open to State Governments or courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under clause (1) of Article 342.

5. ....."

> 10. It is not disputed before us that the documents referred above relate to the relation of the petitioner as already indicated that some of the documents precede the Presidential Notification. Under the circumstances, the documents undoubtedly are having high probative value and should be given due weight particularly having regard to the fact that these entries date back to 1930."

7. In the light of the law laid down by this Court following the decision of the Supreme Court, it is not possible to sustain the order of the Scrutiny Committee. The order of the scrutiny committee is, therefore, set aside. Rule is made absolute in terms of prayer clause (a) with no cost.

8. Necessary validity certificate to be issued by the Scrutiny Committee within a period of four weeks from the date of communication of this decision.

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